

IN THE SUPREME COURT OF THE STATE OF DELAWARE

LYNN HARRIS,	§
	§ No. 321, 2006
Defendant Below-	§
Appellant,	§
	§ Court Below—Superior Court
v.	§ of the State of Delaware
	§ in and for New Castle County
STATE OF DELAWARE,	§ Cr. ID No. 0305005293
	§
Plaintiff Below-	§
Appellee.	§

Submitted: August 15, 2006
Decided: September 22, 2006

Before **STEELE**, Chief Justice, **HOLLAND** and **RIDGELY**, Justices

ORDER

This 22nd day of September 2006, upon consideration of the appellant's opening brief and the appellee's motion to affirm pursuant to Supreme Court Rule 25(a), it appears to the Court that:

(1) The defendant-appellant, Lynn Harris, filed an appeal from the Superior Court's June 13, 2006 order summarily dismissing his motion for postconviction relief pursuant to Superior Court Criminal Rule 61. The plaintiff-appellee, the State of Delaware, has moved to affirm the judgment of the Superior Court on the ground that it is manifest on the face of the opening brief that the appeal is without merit. We agree and AFFIRM.

(2) In February 2004, Harris was found guilty, in a Superior Court bench trial, of Attempted Robbery in the First Degree, Conspiracy and Possession of a Firearm During the Commission of a Felony. He was sentenced to a total of 13 years of Level V incarceration, to be suspended after 10 years for probation. This Court affirmed Harris' convictions and sentences on direct appeal.¹

(3) In this appeal, Harris claims that: a) the State failed to prove its case beyond a reasonable doubt; b) the police lacked reasonable suspicion to stop him; c) the police failed to give him the proper Miranda warnings before conducting a pat down search; and d) his attorney provided ineffective assistance in the direct appeal.

(4) Because Harris' first three claims were already presented in his direct appeal, he is foreclosed from presenting them again in this proceeding unless he can demonstrate that reconsideration of the claims is warranted in the interest of justice.² In the absence of any such evidence, Harris' first three claims are unavailing.

(5) Harris next claims that his counsel provided ineffective assistance, specifically, by failing to file a timely notice of appeal, by filing a motion to withdraw along with his opening brief, and by failing to argue that

¹ *Harris v. State*, Del. Supr., No. 193, 2004, Jacobs, J. (Apr. 11, 2005).

² Super. Ct. Crim. R. 61(i) (4).

the State failed to prove its case, that the police lacked reasonable suspicion to stop him and that the police failed to give him the proper Miranda warnings.

(6) In order to prevail on his claims of ineffective assistance of counsel, Harris must demonstrate that his counsel's representation fell below an objective standard of reasonableness and that, but for his counsel's unprofessional errors, there is a reasonable probability that the outcome of the proceedings would have been different.³ Although not insurmountable, the Strickland standard is highly demanding and leads to a "strong presumption that the representation was professionally reasonable."⁴

(7) As to Harris' first claim of ineffective assistance, the record reflects that, after Harris himself filed a notice of appeal in this Court, the Clerk instructed Harris' attorney to file a formal notice of appeal by a date certain. Because Harris' attorney did as the Clerk instructed, Harris' first contention is without merit. As to Harris' two remaining claims of ineffective assistance, the record reflects that a no-merit brief was filed on Harris' behalf under Supreme Court Rule 26(c), including the points that Harris wished this Court to consider. Ultimately, however, this Court determined that Harris' direct appeal was without merit. Harris has, thus,

³ *Strickland v. Washington*, 466 U.S. 668, 688, 694 (1984).

⁴ *Flamer v. State*, 585 A.2d 736, 753 (Del. 1990).

failed to demonstrate any error on the part of his counsel that prejudiced his case.

(8) It is manifest on the face of Harris' opening brief that the appeal is without merit because the issues presented on appeal are controlled by settled Delaware law and, to the extent that judicial discretion is implicated, clearly there was no abuse of discretion.

NOW, THEREFORE, IT IS ORDERED that, pursuant to Supreme Court Rule 25(a), the State of Delaware's motion to affirm is GRANTED. The judgment of the Superior Court is AFFIRMED.

BY THE COURT:

/s/ Myron T. Steele
Chief Justice